

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Miller
119659

FILE: B-208227**DATE:** October 12, 1982**MATTER OF:** Welbilt Electronic Die Corporation**DIGEST:**

1. Protest that sole-source award of contract was improper is untimely where filed 5 months after date of publication of notice of award in Commerce Business Daily (CBD), since protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known. 4 C.F.R. § 21.2(b)(2) (1982).
2. Bid protest is dismissed as premature where it does not concern immediate procurement, but instead challenges fairness of possible future procurement.

Welbilt Electronic Die Corporation (Welbilt) protests award of contract No. DAAK70-82-C-0050, by the United States Army Mobility Equipment Research and Development Command (Army) to Garcia Ordnance Corporation (Garcia). The contract is for an engineering study to reduce the cost of military engines. The award to Garcia was made under the Defense Small Business Advanced Technology Program (DESAT). The DESAT program encourages small business firms to propose research and development efforts in specified areas of technology for the Department of Defense. Garcia submitted an unsolicited proposal under the DESAT program and an award was made on February 16, 1982.

Welbilt protests the sole-source award to Garcia, contending that Welbilt also had the technical ability to perform the engineering study. Welbilt further asserts that Garcia did not meet DESAT requirements that an offeror have "strong research and development capabilities and experience in high-technology science or engineering" because it is a

relatively new firm, and that this type of study was not covered under the DESAT program. Welbilt also protests any future contract awards to Garcia under phases II or III of the DESAT program on a sole-source basis.

The protest is untimely in part and premature in part.

Welbilt filed its letter of protest with this Office on July 13, 1982. In the Army's report to our Office, received on August 20, 1982, the Army advises that notice that sole-source negotiations had been conducted with Garcia under the DESAT program and the contract subject matter was synopsized in the Commerce Business Daily (CBD) on February 16, 1982. This notice referenced Note 40, published in the CBD on the first CBD publication day each week, which stated that "the notice does not solicit additional proposals." Welbilt's response, received on September 3, 1982, fails to rebut the Army's statement.

Our Bid Protest Procedures require that protests be filed with the General Accounting Office or the contracting agency within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1982).

This Office has held that publication of a procurement in the CBD constitutes constructive notice. Micro Mil, Inc., B-202703, May 1, 1981, 81-1 CPD 335. Thus, Welbilt was on notice of the decision to negotiate on a sole-source basis with Garcia under the DESAT program and to award to that firm. Thus, its protest concerning these matters filed approximately 5 months after Welbilt knew or should have known the basis of its protest is untimely. 4 C.F.R. § 21.2 (1982); Houston Fearless 76, B-199935, September 18, 1980, 80-2 CPD 206.

Welbilt also alleges the Army plans to award phases II and III to Garcia without competition. The Army advises that phases II and III are not covered by this contract and it has made no decision concerning the procurement of the next phases and asserts that this aspect of Welbilt's protest is premature. We agree.

This Office has stated that our Bid Protest Procedures are reserved only for considering whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. Arndt & Arndt, B-202349, March 23, 1981, 81-1 CPD 217. Welblit's allegation concerns the possible future award of phases II and III. Under these circumstances, this protest allegation is premature and is not for consideration on the merits. Arndt & Arndt, supra,

We dismiss the protest.

for *J.H. Barclay, Jr.*
Harry R. Van Cleve
Acting General Counsel